IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

WRIT PETITION NO.3138 OF 2004

Rasiklal A. Sanghvi .. Petitioner

v/s.

The Commissioner of Income-tax,
Mumbai-XVI, Mumbai & ors. .. Respondents

Mr.P.R.Toprani for petitioner.

Mr.B.M.Chatterjee with Mr.R.Asokan i/by
Mr.T.C.Kaushik for respondents.

CORAM : R.M.LODHA AND
J.P.DEVADHAR, JJ.

DATED : 14th December, 2004

P.C.

Heard.

2. Rule. Returnable forthwith.

3. The advocate on record for the revenue waives service.

4. Rule is treated on board for final hearing at this stage.

5. Having considered the available material and all the aspects, we are of the view that the application made by the petitioner seeking extension under section 80HHC (2)(a) of the Income Tax Act, 1961 for realisation of the outstanding

export proceeds requires reconsideration by the Commissioner of Income Tax, Mumbai-XVI, Mumbai. It is so because it is apparent from the particulars available on record that the payment has been received though belatedly from the concerned party. The petitioner in the application seeking extension under section 80HHC (2)(a) for realisation of the outstanding export proceeds set out the ground that due to poor financial condition of the purchaser, he was unable to bring the convertible foreign exchange within time. The fact that the payment has been received suggests that it was beyond the control of the petitioner in realising the export proceeds within time. We are of the view that the matter requires reconsideration by the Commissioner.

6. We, accordingly, set aside the order dated 16th March, 2004 impugned in the present writ petition and direct the Commissioner of Income Tax, Mumbai-XVI, Mumbai to reconsider the petitioner's application seeking extension under section 80HHC (2)(a) in accordance with law. Liberty to the petitioner to apply to the concerned assessing officer for revocation of the notice under section 148 of the Income Tax Act, 1961 dated 17th March, 2004.

7. Rule is disposed of in the aforesaid terms. No costs.

(R.M.LODHA, J.)

(J.P. DEVADHAR, J.)